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2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF NEVADA**

4 Talentscale, Inc.,

5 Plaintiff

6 v.

7 Aery Aviation, LLC,

8 Defendant

Case No. 2:23-cv-00238-CDS-NJK

Order Granting Motion to Dismiss
and Closing Case

[ECF No. 26]

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10 This is a breach-of-contract dispute between plaintiff Talentscale, a Nevada corporation,
11 and defendant Aery Aviation, a Virginia corporation. After I granted without prejudice Aery's
12 first motion to dismiss, Talentscale filed an amended complaint seeking to remedy the identified
13 jurisdictional issues. Aery now moves to dismiss that amended pleading for lack of personal
14 jurisdiction or alternatively for improper venue. Talentscale maintains that this court has
15 personal jurisdiction over Aery. It argues that Aery purposefully availed itself of the privileges of
16 conducting activities in Nevada by contracting with Talentscale, including a Nevada choice-of-
17 law provision in the contract, hiring Nevada employees, and repeatedly soliciting employees and
18 proposals from Talentscale. It also relies on the two-year duration of the parties' relationship
19 and the amount of capital involved—\$9.1 million—as further evidence supporting personal
20 jurisdiction. Despite these arguments, Talentscale fails to meet its burden of establishing that
21 jurisdiction is proper over this Virginia corporation that conducts no business in Nevada. A
22 party's emphatic repetition of the forum state's name in its pleading—without more—cannot
23 establish personal jurisdiction. I therefore grant Aery's motion to dismiss without prejudice to
24 Talentscale's ability to re-file this case in an appropriate court.

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1 I. **Background**

2 a. *Relevant facts*

3 Talentscale is a disabled-veteran-owned staffing company that places veterans in jobs.
4 Am. Compl., ECF No. 25 at ¶ 10. Aery is an aircraft procurement company that provides
5 aerospace-related services to entities such as the United States military, federal government
6 agencies, and foreign governments. *Id.* at ¶¶ 13–14, 17. Talentscale is a Nevada corporation with
7 its principal place of business in Las Vegas. *Id.* at ¶¶ 2, 23. And Aery is a Virginia limited liability
8 company with its principal place of business in Newport News, Virginia. *Id.* at ¶ 3. Talentscale
9 admits that all of Aery’s members are likewise Virginia residents. *Id.* at ¶ 3.

10 In January 2021, Talentscale and Aery entered into a written contract under which
11 Talentscale agreed to provide staffing services to Aery. *Id.* at ¶ 22. The parties decided that
12 Nevada law would govern the agreement. *Id.* at ¶ 24. And under the agreement, Talentscale “is
13 responsible for the workers’ mandatory/statutory benefits, Workers’ Compensation,
14 Unemployment Insurance, health benefits, and federal, state and/or local taxes, and overtime
15 hours.” *Id.* at ¶ 27. Talentscale asserts that “[b]ecause the Nevada [p]laintiff’s performance
16 involved ‘furnishing’ the employees, [p]laintiff’s performance of its responsibilities under the
17 [a]greement occurred in the Nevada forum state.” *Id.* at ¶ 29. Beginning when the contract was
18 signed, Talentscale “furnished, deployed, and paid[] a total of 96 skilled employees to work with
19 [Aery].” *Id.* at ¶¶ 34–35. The total amount that Talentscale billed to Aery exceeded \$9.1 million.

20 *Id.* at ¶ 37. In late 2022, Aery stopped paying Talentscale what it owed under the agreement,
21 causing Talentscale to bring this action. *Id.* at ¶¶ 88–110. Talentscale asserts that Aery owes
22 \$760,319.20 in overdue invoices, plus late fees, costs, and reasonable attorneys’ fees. *Id.* at ¶¶ 139–
23 40.

24 In its amended complaint, Talentscale includes pages of allegations detailing various
25 emails that Aery employees sent to Talentscale to coordinate the onboarding and management of
26 new employees. *Id.* at ¶¶ 58–87. In each allegation, Talentscale repeatedly states that Aery’s

1 various employees “unilaterally reached into the Nevada forum state, to the Nevada [p]laintiff,
 2 pursuant to the [a]greement under Nevada law[.]” *Id.* Without explanation, Talentscale states
 3 that although the contract contains a mandatory arbitration clause, Talentscale and Aery have
 4 both waived the arbitration clause, and Aery has not invoked it. *Id.* at ¶ 108. In sum, Talentscale
 5 brings these three claims: breach of contract, unjust enrichment, and “action for account stated.”
 6 *Id.* at ¶¶ 112–40.

7 **b. Procedural history**

8 In March of this year, Aery moved to dismiss Talentscale’s original complaint, and
 9 Talentscale counter-moved to conduct limited jurisdictional discovery. ECF Nos. 14, 17. To aid
 10 me in resolving the motions, I held a hearing on April 12 after both motions were fully briefed
 11 and heard further argument from the parties about both motions. ECF Nos. 18, 24. I denied
 12 Talentscale’s motion for jurisdictional discovery, but I granted Aery’s motion to dismiss for
 13 improper venue. ECF No. 24. I did so without prejudice and gave Talentscale leave to file an
 14 amended complaint addressing the jurisdictional deficiencies. *Id.* If Talentscale chose to file an
 15 amended pleading, then I ordered the parties to meet and confer about the arbitration clause in
 16 the contract before filing any other dispositive motions, and I ordered them to include the
 17 results of that meet and confer in any such motion.¹ *Id.* A month after the hearing, Talentscale
 18 timely filed an amended complaint, which Aery seeks to dismiss under Federal Rule of Civil
 19 Procedure 12(b)(2) for lack of personal jurisdiction and alternatively under Rule 12(b)(3) for
 20 improper venue.

21 **II. Legal standard**

22 “The Due Process Clause of the Fourteenth Amendment constrains a [s]tate’s authority
 23 to bind a nonresident defendant to a judgment of its courts.” *Walden v. Fiore*, 571 U.S. 277, 183

24 ¹ I recognize that the minutes of the hearing did not capture this portion of my oral ruling. See ECF No.
 25 24. The parties do not indicate that such a meet-and-confer ever occurred. But because the hearing
 26 minutes did not include this information, to the extent necessary, I vacate my prior order directing the
 parties to meet and confer on the arbitration issue. This issue can be addressed if and when this case is
 refiled in another court.

1 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)). It is well established
 2 that “[f]or a court to exercise personal jurisdiction over a nonresident defendant, that defendant
 3 must have at least ‘minimum contacts’ with the relevant forum such that the exercise of
 4 jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’”
 5 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (quoting *Int'l Shoe Co. v.*
 6 *Washington*, 326 U.S. 310, 316 (1945)). “Personal jurisdiction over a nonresident defendant is
 7 tested by a two-part analysis. First, the exercise of jurisdiction must satisfy the requirements of
 8 the applicable state long-arm statute. Second, the exercise of jurisdiction must comport with
 9 federal due process.” *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1404–05 (9th Cir. 1994) (citation
 10 omitted). By statute, “Nevada has authorized its courts to exercise jurisdiction over persons ‘on
 11 any basis not inconsistent with . . . the Constitution of the United States.’” *Walden*, 571 U.S. at
 12 283 (quoting Nev. Rev. Stat. § 14.065). So the jurisdictional analyses under state and federal law
 13 are the same. *Vanguard Dealer Servs., LLC v. Cervantes*, 2022 WL 2918942, at n.14 (D. Nev. July 22,
 14 2022) (citing *Walden*, 571 U.S. at 283)).

15 There are two kinds of personal jurisdiction: general and specific. This order addresses
 16 the latter only.² Courts apply a three-part test to determine the appropriateness of specific
 17 jurisdiction over a non-resident defendant. *Schwarzenegger*, 374 F.3d at 802 (citing *Lake v. Lake*, 817
 18 F.2d 1416, 1421 (9th Cir. 1987)). “The plaintiff bears the burden on the first two prongs.” *Boschetto*
 19 *v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (citing *Schwarzenegger*, 374 F.3d at 802). If the
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21 ² In its amended complaint—and in the initial round of personal-jurisdiction briefing as well as at the
 hearing—Talentscale contends that Aery’s website lists Nevada-based company Las Vegas Sands
 22 Corporation as one of its clients, which somehow subjects Aery to the jurisdiction of Nevada courts. ECF
 No. 25 at ¶¶ 17–21. See also ECF No. 16 at 2, 4–5, 8; ECF No. 16-1 at ¶¶ 17–23; ECF No. 24. As Aery points
 23 out, “[i]n its opposition brief, however, Talentscale made no mention of Las Vegas Sands, nor did it
 attempt to argue this [c]ourt has general jurisdiction over Aery.” ECF No. 28 at 2. Talentscale includes in
 24 its amended complaint a single conclusory statement about general jurisdiction. ECF No. 25 at ¶ 6. Based
 on Talentscale’s silence about general jurisdiction in its response and the lack of any facts indicating that
 25 Aery is “essentially at home” in Nevada, I decline to address general jurisdiction in this order and focus
 exclusively on the other type: specific jurisdiction. See *Daimler AG v. Bauman*, 571 U.S. 117 (2014) (discussing
 26 general jurisdiction, which requires affiliations so “continuous and systematic” as to render the foreign
 corporation “essentially at home in the forum [s]tate”).

1 plaintiff establishes both of the first two prongs, then “the defendant must come forward with a
 2 ‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.* (citations
 3 omitted). A plaintiff’s failure to meet the first prong means that “the jurisdictional inquiry ends
 4 and the case must be dismissed.” *Id.* (citing *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir.
 5 2006)). The first prong requires that “[t]he non-resident defendant must purposefully direct his
 6 activities or consummate some transaction with the forum or resident thereof; or perform some
 7 act by which he purposefully avails himself of the privilege of conducting activities in the forum,
 8 thereby invoking the benefits and protections of its laws.” *Id.* (citing *Schwarzenegger*, 374 F.3d at
 9 802). The second prong requires that “the claim must be one which arises out of or relates to the
 10 defendant’s forum-related activities,” and the third mandates that “the exercise of jurisdiction
 11 must comport with fair play and substantial justice, i.e. it must be reasonable.” *Id.* (citing
 12 *Schwarzenegger*, 374 F.3d at 802).

13 “In opposition to a defendant’s motion to dismiss for lack of personal jurisdiction, the
 14 plaintiff bears the burden of establishing that jurisdiction is proper.” *Boschetto*, 539 F.3d at 1015
 15 (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). If the court resolves the motion without
 16 holding an evidentiary hearing, “the plaintiff need only make a prima facie showing of the
 17 jurisdictional facts.” *Id.* (quoting *Sher*, 539 F.3d at 1015). “Uncontroverted allegations in the
 18 plaintiff’s complaint must be taken as true.” *Id.* (citing *AT&T Co. v. Compagnie Bruxelles Lambert*, 94
 19 F.3d 586, 588 (9th Cir. 1996)). “Conflicts between the parties over statements contained in
 20 affidavits must be resolved in the plaintiff’s favor.” *Id.* (quoting *Schwarzenegger*, 374 F.3d at 800).

21 III. Discussion

22 My analysis begins and ends with the first prong of the three-part test: purposeful
 23 availment. “To have purposefully availed itself of the privilege of doing business in the forum, a
 24 defendant must have ‘performed some type of affirmative conduct which allows or promotes the
 25 transaction of business within the forum state.’” *Boschetto*, 539 F.3d at 1016 (quoting *Sher*, 911 F.2d
 26 at 1362). Courts view a non-resident defendant’s contract or other business in the forum through

1 a “rather practical and pragmatic” lens, not a “rigid and formalistic” one. *Id.* (citing *Burger King*
 2 *Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985); *Lake*, 817 F.2d at 1421). And the United States
 3 Supreme Court has been clear that “the formation of a contract with a nonresident defendant is
 4 not, standing alone, sufficient to create jurisdiction.” *Id.* (citing *Burger King*, 471 U.S. at 478). But
 5 that is exactly the situation here.

6 Nothing more than the signing of a contract with a Nevada plaintiff ties Aery to Nevada.
 7 The two parties signed a contract under which Talentscale agreed to provide staffing to Aery.
 8 Nothing indicates that Aery executed the contract in Nevada or traveled to Nevada for the
 9 negotiations. Walton Decl., ECF No. 14-4. Further, all three of Aery’s members are Virginia
 10 residents, and none of them owns property in Nevada or conducts business here. Walton Decl.,
 11 ECF No. 14-1; Dynan Decl., ECF No. 14-2; Beale Decl., ECF No. 14-3; ECF No. 14-4. Similarly,
 12 Aery maintains no property in Nevada, is not registered to do business in Nevada, and does not
 13 have an agent appointed to receive process in Nevada. ECF No. 14-4. Talentscale does not
 14 dispute any of these assertions. Rather, in its response to Aery’s motion to dismiss, Talentscale
 15 maintains that this court has personal jurisdiction over Aery because Talentscale’s own
 16 “performance occurred in Nevada[,] and the damages [Talentscale] sustained as a result of
 17 [Aery’s] non-payment were also incurred in Nevada.” ECF No. 27 at 10. It also contends that
 18 Aery “repeatedly, systematically, and unilaterally solicited [Talentscale’s] business” and
 19 “submitted proposals and requisitions, negotiated rates, and coordinated consummation of
 20 staffing deployments.” *Id.* at 10–11. Finally, Talentscale insists that the inclusion of a Nevada
 21 choice-of-law provision in the contract put Aery on notice that it could be subject to litigation
 22 in Nevada. *Id.* at 11–13.

23 Talentscale’s first two arguments are unavailing. The United States Supreme Court has
 24 “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by
 25 demonstrating contacts between the plaintiff (or third parties) and the forum [s]tate.” *Walden*,
 26 571 U.S. at 284 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984)). “Put

1 simply, however significant the plaintiff's contacts with the forum may be, those contacts
 2 cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Id.*
 3 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)). What matters for this analysis is not whether
 4 Talentscale had contacts with Nevada, but whether Aery did. Consistent with longstanding
 5 case law, I reject Talentscale's assertions that its own performance under the contract in Nevada
 6 or its incurring of damages in Nevada somehow imputed jurisdiction onto Aery.

7 Courts look "to the defendant's contacts with the forum [s]tate itself, not the defendant's
 8 contacts with persons who reside there." *Id.* at 285. The Supreme Court emphasizes that "the
 9 plaintiff cannot be the only link between the defendant and the forum. Rather, it is the
 10 defendant's conduct that must form the necessary connection with the forum [s]tate that is the
 11 basis for its jurisdiction over him." *Id.* (citations omitted). And, crucially, "[d]ue process requires
 12 that a defendant be haled into court in a forum [s]tate based on his own affiliation with the
 13 [s]tate, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting
 14 with other persons affiliated with the [s]tate." *Id.* (quoting *Burger King*, 471 U.S. at 475). This
 15 invalidates Talentscale's argument as to Aery's repeated contacts with Talentscale about hiring
 16 additional staff, negotiating rates, and seeking Talentscale's business. The pages of allegations in
 17 Talentscale's amended complaint detailing emails that Aery sent to Talentscale lend no support
 18 to this argument. All Talentscale alleges are contacts between Aery and Talentscale—not
 19 between Aery and Nevada. This is insufficient to establish personal jurisdiction over Aery.

20 Lastly, I turn to the agreement's choice-of-law provision. It has long been established
 21 that a choice-of-law provision "standing alone would be insufficient to confer jurisdiction."
 22 *Burger King*, 471 U.S. at 482. In *Burger King v. Rudzewicz*, the Supreme Court recognized that choice-
 23 of-law provisions should be considered in jurisdictional analyses. *Id.* The Court ultimately
 24 decided that the choice-of-law provision in that case, "when combined with the 20-year
 25 interdependent relationship" of the parties, "reinforced" the defendant's "deliberate affiliation
 26 with the forum [s]tate and the reasonable foreseeability of possible litigation there." *Id.* But as

1 Aery puts it, the “something more” (in addition to the choice-of-law provision) is missing here.
 2 ECF No. 26 at 10. Having disregarded Talentscale’s contentions about Aery’s contacts with
 3 Talentscale and Talentscale’s own contacts with Nevada, all that remains is the choice-of-law
 4 provision, indicating that Nevada law would apply to any dispute between the parties. If it were
 5 instead a forum selection clause, that would perhaps lend more weight to Talentscale’s
 6 argument that Aery anticipated litigation in Nevada, but that is not the case here. *See, e.g., Gunn v.*
 7 *Wild*, 2018 WL 473005, at *6 (D. Nev. Jan. 18, 2018). Without more, the choice-of-law provision
 8 is inadequate to confer personal jurisdiction over Aery.

9 It is true, as Talentscale urges, that “[u]ncontroverted allegations *in the complaint* are
 10 accepted as true and any conflicts in the parties’ affidavits are resolved in the plaintiff’s favor ‘for
 11 purposes of deciding whether a *prima facie* case for personal jurisdiction exists.’” ECF No. 27 at
 12 6 (quoting *AT&T Co.*, 94 F.3d at 588–89) (emphasis added). Notably absent from Talentscale’s
 13 amended complaint is any mention of where the contracted staffing services were provided. The
 14 closest it gets to identifying the location the services were provided is its reference to some of
 15 the quoted emails from Aery showing that workers were stationed in California at North Island
 16 (near San Diego); generally “on [the] East & West Coasts”; and in Cleveland, Ohio. *Id.* at ¶¶ 62,
 17 70, 73. In contrast, Aery contends that Talentscale never provided staffing to Aery on any project
 18 or at any location in Nevada and maintains that all staffing services under the contract were
 19 provided in Virginia. ECF No. 26 at 9, 11 (citing ECF No. 14-4 at ¶ 5, ECF No. 19-1 at ¶ 5). In a
 20 declaration filed earlier in this case, Talentscale refutes Aery’s declaration as “inaccurate” and
 21 insists that “the staffing services performed by Talentscale were provided in Nevada and not
 22 Virginia” because they were “undertaken, sourced, deployed, and paid by Talentscale, the
 23 Nevada corporation.” Ulmer Decl., ECF No. 16-1 at ¶ 28. Even resolving the affidavits’ conflicts in
 24 Talentscale’s favor, I do not find that Aery purposefully availed itself of the privilege of doing
 25 business in Nevada. The amended complaint makes clear that Talentscale provided Nevada-
 26 based employees to Virginia-based Aery, which then staffed those individuals on various

1 projects throughout the United States—but notably, not in Nevada. Nothing in the complaint
2 tethers Aery to Nevada such that it would reasonably anticipate litigation here.

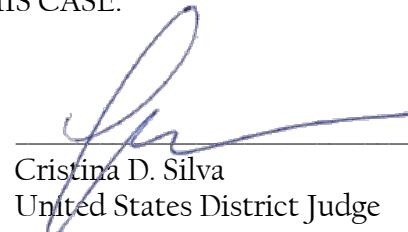
3 “However minimal the burden of defending in a foreign tribunal, a defendant may not be
4 called upon to do so unless he has had the ‘minimal contacts’ with that [s]tate that are a
5 prerequisite to its exercise of power over him.” *Hanson v. Denckla*, 357 U.S. 235, 251 (1958) (citing
6 *Int'l Shoe*, 326 U.S. at 319). Such minimum contacts are lacking here. Despite its multitude of
7 arguments, Talentscale fails to carry its burden of establishing that Aery purposefully availed
8 itself of the privilege of doing business in Nevada. Because Talentscale does not meet its burden
9 as to the first prong of the personal-jurisdiction test, I need not and do not address the other two
10 prongs—whether the claim arose out of Aery’s forum-related activities and whether jurisdiction
11 would be reasonable. And because this court lacks specific jurisdiction over Aery, I grant its
12 motion to dismiss without prejudice to Talentscale’s ability to refile this case in the proper
13 forum.

14 **IV. Conclusion**

15 IT IS THEREFORE ORDERED that Aery’s motion to dismiss [ECF No. 26] is
16 GRANTED without prejudice to Talentscale’s ability to re-file this case in the appropriate
17 court. The Clerk of Court is directed to CLOSE THIS CASE.

18 DATED: August 1, 2023

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Cristina D. Silva
United States District Judge